

Translation

PATENT COOPERATION TREATY

PCT/EP2003/003705



PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference 37250034 fuh/bhr	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/EP2003/003705	International filing date (day/month/year) 10 April 2003 (10.04.2003)	Priority date (day/month/year) 24 April 2002 (24.04.2002)
International Patent Classification (IPC) or national classification and IPC A43B 7/22		
Applicant SEITER, Hans		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of <u>5</u> sheets, including this cover sheet. <input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT). These annexes consist of a total of <u>1</u> sheets.
3. This report contains indications relating to the following items: I <input checked="" type="checkbox"/> Basis of the report II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application

Date of submission of the demand 13 September 2003 (13.09.2003)	Date of completion of this report 19 July 2004 (19.07.2004)
Name and mailing address of the IPEA/EP	Authorized officer
Facsimile No.	Telephone No.

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

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I. Basis of the report

1. With regard to the elements of the international application:*

- ☐ the international application as originally filed
- ☒ the description:
pages 1-12, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☒ the claims:
pages 3 (part), 4-13, as originally filed
pages _____, as amended (together with any statement under Article 19
pages _____, filed with the demand
pages 1, 2, 3 (part), filed with the letter of 23 December 2003 (23.12.2003)
- ☒ the drawings:
pages 1/3-3/3, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____
- ☐ the sequence listing part of the description:
pages _____, as originally filed
pages _____, filed with the demand
pages _____, filed with the letter of _____

2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.
These elements were available or furnished to this Authority in the following language _____ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☐ The amendments have resulted in the cancellation of:

- ☐ the description, pages _____
- ☐ the claims, Nos. _____
- ☐ the drawings, sheets/fig _____

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).**

* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rule 70.16 and 70.17).

** Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims	1-13	YES
	Claims		NO
Inventive step (IS)	Claims		YES
	Claims	1-13	NO
Industrial applicability (IA)	Claims	1-13	YES
	Claims		NO

2. Citations and explanations

Reference is made to the following documents:

D1: US 2001/039746 A1 (SEITER HANS) 15 November 2001
(2001-11-15)

D2: US-A-5 509 218 (ARCAN MIRCEA ET AL) 23 April 1996
(1996-04-23)

The present application does not meet the requirements of PCT Article 33(1) since the subject matter of claim 1 does not involve an inventive step within the meaning of PCT Article 33(3).

D1 is considered the prior art closest to the subject matter of claim 1. D1 discloses (the references in brackets are to that document): a shoe insole (11) with a sole base body (36), a sole cover layer (37) and, provided over the sole surface, a plurality of cushion-like layers (12-16) in the form of at least one first cushion-like layer (12) in the forefoot joint region, a second cushion-like layer (13) in the transitional region between the metatarsus and the tarsus, and a third cushion-like layer (14) in the transitional region between the metatarsus and the heel, each of these cushion-like layers used to assist venous blood drainage being divided into individual,

mutually separate, plateau-like areas (18-27) that are adjacent one another in the transverse direction of the sole surface (17), and the upper side of the cushion-like layers which are likewise covered by the sole cover layer (37) approximately forming a plane with the upper side of the sole base body (36), or being raised relative to the plane of the upper side of the sole base body (36, 136).

Therefore the subject matter of claim 1 differs from the known shoe insole in that at least one indentation, proceeding from the upper side of the sole base body, is provided between the first cushion-like layer in the forefoot joint region and the second cushion-like layer in the transitional region between the metatarsus and the tarsus, to relieve pressure and support the diabetic metabolic condition of the head(s) of the metatarsal bone(s).

Therefore the problem to be solved by the present invention can be considered to be that of preventing narrowing and, in certain circumstances, blockage of the larger arteries and smaller arteries and capillaries which occur as a result of the diabetic metabolic condition in the metatarsal bone head region of the sole of the foot.

For the following reasons, the solution proposed in claim 1 of the present application cannot be considered inventive (PCT Article 33(3)): D2 (see column 5, lines 6 and 7, and figures 6 and 7) describes an indentation for accommodating the heads of the metatarsal bones in the transitional region between the metatarsus and the tarsus (see figure 6); therefore a person skilled in the art would consider the inclusion of this feature in the shoe insole described in D1 a conventional design measure for solving the problem of interest.

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Dependent claims 2 to 13 do not contain any features which, combined with the features of any claim to which they refer, meet the PCT inventive step requirements; see D1 and D2, and the relevant passages cited in the search report.